

City of Detroit

CITY COUNCIL

IRVIN CORLEY, JR.
DIRECTOR
(313) 224-1076

FISCAL ANALYSIS DIVISION
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 218
Detroit, Michigan 48226
FAX: (313) 224-2783
E-Mail: irvin@cncl.ci.detroit.mi.us

ANNE MARIE LANGAN
DEPUTY DIRECTOR
(313) 224-1078

TO: COUNCIL MEMBERS

FROM: Irvin Corley, Jr., Director *ICJ*

DATE: Transfer of jurisdiction of a portion of Blain Parcel, a/k/a Atwater West to the Water and Sewerage Department for potential future CSO Control Facility (**Recommend Approval**)

Attached is a resolution from Finance regarding the transfer of jurisdiction of approximately 52% of Blain Parcel on the riverfront. The Department of Water and Sewerage would pay \$17.7 million for this transfer.

In a usual transaction, property is exchanged at fair market value, which approximates \$7 million for this Blain Parcel.

However, the City acquired the property through eminent domain process, and the courts established a value of \$25 million for the entire Blain Parcel, or \$13 million for 52% of the Blain parcel. When court cost and interest is added, the value approximates \$17.7 million.

Based on a conversation with two CPAs, the new cost basis for 52% of the Blain Parcel is \$17.7 million, and it is proper to sell this parcel at this amount to a willing buyer.

I had a question about transferring title to DWSD for this transfer, and the Law Department opined since the City "owns" DWSD, a specific title in DWSD's name is a "nullity". Apparently, the transfer of jurisdiction over to DWSD also transfers any associated liability to DWSD.

In addition, the Board of Water Commissioners approved this transaction on June 18, 2008 (see attached).

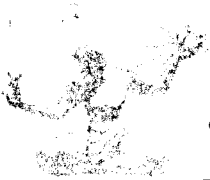
Lastly, it appears DWSD had interest in the Blain property going back to 2000 for a combined sewerage overflow project.

I recommend approval of this transaction, hopefully by June 30, 2008, to count it as 2007-08 revenue.

Attachments

cc: Council Divisions, Auditor General's Office, Anthony Adams-Deputy Mayor, Norman White-Chief Financial Officer, Pamela Scales-Budget Director, Douglass Diggs, PDD Director, Kerwin Wimberly, Mayor's Office

ICJ:\CORLEY\Blaine Property DWSD Land Transfer 6 24 2008.doc



CITY OF DETROIT
FINANCE DEPARTMENT

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1200
DETROIT, MICHIGAN 48226
PHONE: 313-224-3491
FAX: 313-224-4466
WWW.CI.DETROIT.MI.US

May 15, 2008

HONORABLE CITY COUNCIL

RE: Transfer of jurisdiction of a portion of Blain Parcel, a/k/a Atwater West to the Water and Sewerage Department for potential future CSO Control Facility

On March 16, 1994 (JCC pp 492-93), the City Council adopted a "Resolution of Authority" for the Detroit Water and Sewerage Department ("DWSD") to acquire properties, easements and rights-of-way for the purpose of constructing federally-mandated Combined Sewer Overflow ("CSO") basins. In anticipation of the future requirements for storm water control in the East Riverfront Development Area, DWSD has identified the northern portion of the parcel formerly known as the Blain Parcel, now known as Atwater West, as the location for a CSO Control Facility to be installed in the future when required. However, in order for the parcel to be available for the CSO program, jurisdiction over the Atwater West parcel needs to be transferred to DWSD. The Planning & Development Department, the Recreation Department, and the Economic Development Corporation of the City of Detroit are all in support of the transfer of jurisdiction to DWSD.

The City acquired the Blain Parcel through the eminent domain process from Detroit Plaza Limited Partnership. The total acquisition cost, including the value of the land, interest, attorney fees, and costs, was \$34,134,313.03. The size of the Atwater West parcel is 51.9% of the size of the entire Blain Parcel. The proportionate cost of the Atwater West parcel is therefore \$17,715,708.46. DWSD Director Victor Mercado has agreed that this amount of the acquisition cost should be borne by the DWSD CSO program in exchange for receiving jurisdiction over the Atwater West parcel.

In accordance with City Code § 14-8-3, I have designated the Detroit Water & Sewerage Department as the department to manage and maintain the Atwater West parcel, which is being held for future public use as a CSO facility. Pursuant to City Code § 14-8-3, I am hereby asking your Honorable Body to adopt the attached resolution which approves the transfer of jurisdiction of the 142,455 square foot Atwater West parcel to DWSD, in exchange for reimbursement from the DWSD CSO program of the pro rata acquisition cost of \$17,715,708.46.

Respectfully submitted,

Norman L. White
Chief Financial Officer / Finance Director

Attachment

RESOLUTION

BY COUNCIL MEMBER: _____

RESOLVED, the Detroit City Council approves the designation of the Detroit Water and Sewerage Department as the department to manage and maintain the real property known as Atwater West, described below, which is being held for future public use as a potential Combined Sewer Overflow Control Facility:

ATWATER WEST

Land in the City of Detroit, County of Wayne, State of Michigan, being part of Private Claims 7, 12, 132, and 181, being part of the "Plat of Part of the Rivard Farm Lying South of Jefferson Avenue," Private Claim 181, as recorded in Liber 6 of Deeds, Page 52 (W.C.R.); also Part of Lots I, K, L, M, N, O of "Private Plat of Mullet Farm Plat," (Front Concession), City of Detroit, Private Claims 7 and 132, as recorded in Liber 226 of Deeds, Pages 439, 440 and 442 (W.C.R.); also All of Lot 7 and part of Lot 1, of "Plat of the Guoin Farm," as subdivided by A.E. Hathon, May 1836, recorded June 20, 1836 in Liber 11 of Deeds on Page 596 (W.C.R.) described as:

Commencing at the intersection of the southwesterly line of vacated Riopelle Street (30 feet wide) and the southeasterly line of Atwater Street (50 feet wide), also being the northeasterly corner of Lot 3 of, "Plat of the Subdivision of the Dominique Riopelle Farm, Being the Front Part of P.C.13," as recorded in Liber 15 of Deeds, Pages 394 and 395 (W.C.R.) and in Liber 25 of Deeds, Pages 405-407 (W.C.R.), thence S64°47'10"W 422.44 feet to the northeasterly corner of Lot 7 of said "Plat of the Guoin Farm" also being the Point of Beginning; thence S26°37'56"E along the northeasterly line of Lot 7 and Lot 1 of said "Plat of the Guoin Farm," 270.52 feet; thence S64°47'33"W 425.60 feet; thence N13°04'02"W 66.49 feet; thence S65°27'27"W 83.42 feet; thence S64°59'27"W 93.23 feet; thence N25°49'38"W 99.04 feet; thence N21°42'52"E 138.66 feet; thence N24°30'08"W 15.85 feet to the proposed southeasterly line of Atwater Street (60 feet wide); thence N65°32'20"E along a line measuring 10.00 feet perpendicular to the southeasterly line of Atwater Street (50 feet wide), 418.45 feet; thence N64°47'10"E 62.71 feet to the northeasterly line of Lot 7 of said, "Plat of the Guoin Farm," also being the Point of Beginning. Containing 142,455 square feet, 3.27 acres, more or less.

RESOLVED FURTHER, that the Finance Director is authorized to transfer funds, adjust the proper accounts and honor vouchers in accordance with the foregoing communication and regulations of the City of Detroit.



CITY OF DETROIT
LAW DEPARTMENT

TIMOTHY A. BECKETT, ESQ.
SUPERVISING ASSISTANT CORPORATION COUNSEL
DIRECT DIAL 313-237-3008
E-MAIL: BECKETT@LAW.CI.DETROIT.MI.US

660 WOODWARD AVENUE
1650 FIRST NATIONAL BUILDING
DETROIT, MI 48226-3535
PHONE 313-224-4550
FAX 313-224-5505
WWW.CI.DETROIT.MI.US

DEPARTMENTAL MEMORANDUM

TO: John E. Johnson, Jr.
Corporation Counsel

Judith A. Turner
Chief Assistant Corporation Counsel, Commercial Division

FROM: Timothy A. Beckett *T. Beckett*
Supervising Assistant Corporation Counsel, Property & Tax Appeals Section

RE: Detroit Plaza Limited Partnership eminent domain litigation
Division of parcel, a/k/a Blain Parcel, between park and DWSD purposes

DATE: September 19, 2007

Executive Summary

A question has been posed regarding the potential of allocating to the Detroit Water & Sewerage Department a share of the acquisition costs of the Blain Parcel. If the sharing is based on the area of the parcel reserved for a DWSD combined sewer overflow facility as a percentage of the entire Blain Parcel, then the DWSD portion is 51.9%. If this is applied to the total acquisition cost as of June 26, 2007, the date the judgment became final, then the DWSD share is \$17,715,708.46.

Background

The City initiated condemnation proceedings to acquire a parcel of land commonly known as the Blain Parcel from Detroit Plaza Limited Partnership, *et al.* The City acquired title on September 22, 2000, and possession on September 4, 2001, pursuant to an "Order Waiving Necessity And Other Challenges[,] Confirming Title, Setting Possession Date, and Directing Payment of Estimated Just Compensation", a copy of which is attached as Exhibit A. The legal description of the Blain Parcel, which is actually comprised of four tax parcels, is included as exhibit 1 to the Order.

Size of Blain Parcel

The legal descriptions in exhibit 1 to the Order do not contain any indication of the area of the entire Blain Parcel or the four individual components. However, the City, through the Economic Development Corporation ("EDC") commissioned a survey of the Blain Parcel by Metco, Job No. 01-039, dated 11/06/02. A reduced copy of that survey, together with enlarged copies of the survey map and legal descriptions of the four component parcels, is attached as Exhibit B. Adding the areas of the four parcels results in an overall area of the Blain Parcel of 274,229 square feet, or 6.3 acres:

John E. Johnson, Jr. and Judith A. Turner
Re: DWSD proportionate share of Blain Parcel
September 19, 2007
Page 2

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT**

Parcel	Area
Parcel 1	29,455
Parcel 2	89,638
Parcel 3	39,450
Parcel 4	115,886
Total	274,429

Size of DWSD portion of Blain Parcel

In anticipation of further development along the East Riverfront, including making accommodations for the Riverwalk and the Tricentennial State Park, the City through the EDC undertook to have the Blain Parcel divided in a north-south, zig-zag fashion. The purpose of the division was to obtain a legal description for the northern portion of the Blain Parcel for potential future use for a combined sewer overflow ("CSO") facility, and legal descriptions for the southern portion for leasing to the Detroit Riverfront Conservancy for the Riverwalk, and to the Michigan Department of Natural Resources ("MDNR") for the Tricentennial State Park.

The EDC commissioned Metco to produce a survey, Job No. 06-92-1A dated 08/25/06, to show this division. A reduced copy of that survey, together with enlarged copies of the survey map and the legal description of the northern CSO parcel, is attached as Exhibit C. The northern, CSO parcel is now generally referred to as the "Atwater West" parcel. The survey reveals that the size of the Atwater West parcel is 142,455 square feet.

Therefore, the proportion of the Atwater West (CSO) parcel to the entire Blain Parcel is $142,455 \div 274,429 = 0.519096$, or 51.9%.

Other considerations

Tricentennial Park Lease

The City of Detroit and the MDNR have concluded negotiations for the Tricentennial Park lease¹, pursuant to which the City will lease to the MDNR several parcels of land, including the Atwater West parcel. In Exhibit C, Part F of the lease, the City has reserved the right to install a sub-surface CSO facility on the Atwater West parcel. A copy of Exhibit C to the Tricentennial Park

¹ The City has signed the lease and delivered it to the MDNR. We are awaiting the return of the lease signed by the MDNR. In addition, City Council authorization is required. A resolution authorizing the lease will be proposed to City Council within the next week to 10 days.

Page 3

EDC ownership of Blain Parcel

Transfer of jurisdiction of Atwater West Parcel to DWSD

In order to allocate a share of the acquisition costs of the Blain Parcel to DWSD, it will probably be necessary to transfer jurisdiction over the Atwater West parcel to DWSD. If so, customary practice and Chapter 14, Article 8 of the Detroit City Code will require the consent of the finance director and city council. See my memorandum to City Council on this issue pertaining to a proposed CSO facility on Belle Isle dated March 24, 2004, attached as Exhibit E.

Acquisition cost proportionately allocated to DWSD

If DWSD pays a proportionate share of the total cost of acquisition through date of final judgment, then its share would be \$17,715,708.46 based on the figures provided by defense counsel in its letter to the City's counsel attached as Exhibit F:

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CITY OF DETROIT
WATER AND SEWERAGE DEPARTMENT
BOARD OF WATER COMMISSIONERS

735 RANDOLPH STREET
DETROIT, MICHIGAN 48226-2830
PHONE: 313-224-4704
FAX: 313-224-6067

Agenda of June 18, 2008

Item No.10.A.8
Part of Blain Parcel, a/k/a Atwater
West - East Riverfront
Acquisition
Amount: \$17,715,708.46

TO: The Honorable
Board of Water Commissioners
City of Detroit, Michigan

FROM: Victor M. Mercado, Director
Water and Sewerage Department

DATE: June 18, 2008

RE: Acquisition of Land from Planning & Development Department for future
Combined Sewer Overflow Improvements in East Riverfront area

MOTION: Upon recommendation of Victor M. Mercado, Director, the Board of Water Commissioners authorizes the Director to approve the acquisition of a 3.27 acre parcel of land south of Atwater and east of Rivard known as the Atwater West Parcel from the Planning & Development Department for the future construction of a combined sewer overflow facility. The price of the acquisition is \$17,715,708.46, which is a pro rata portion of the City's total acquisition cost of the entire Blain parcel, of which the Atwater West Parcel comprises approximately 52%, and also authorizes the Director to take such action as may be necessary to accomplish the intent of this vote.

The recommendation was considered by the Board of Water Commissioners and action taken as noted below.

BOARD OF WATER COMMISSIONERS:

ACTION: APPROVED

DATE: JUN 18 2008

BY: Victor M. Mercado
Victor M. Mercado, Director



BACKGROUND

On March 16, 1994 the City Council adopted a Resolution of Authority for the Detroit Water and Sewerage Department ("DWSD") to acquire property, rights of access and rights-of-way for the purpose of constructing federally mandated combined sewer overflow ("CSO") facilities. In anticipation of the future requirements for storm water control in the East Riverfront Development Area, DWSD has identified the northern portion of the Blain Parcel, now known as the Atwater West Parcel, as the location for a CSO Control Facility.

The Atwater West Parcel is the northern portion of the Blain Parcel located on the Detroit River south of Atwater and east of Rivard. The Blain Parcel was acquired by the City of Detroit in eminent domain litigation against the Detroit Plaza Limited Partnership at a total cost of \$34,134,313.03. DWSD seeks to acquire 51.9% of the Blain Parcel (3.27 acres) for construction of a combined sewer overflow facility. DWSD will pay the Planning and Development Department 51.9% of the City's cost of acquiring the Blain Parcel, \$17,715,708.46. The remainder of the parcel has been leased to the State of Michigan for a park.

DWSD has worked out arrangements with the City of Detroit Planning & Development Department ("P&DD"), with the support of the Recreation Department, and the Economic Development Corporation of the City of Detroit, to acquire the Atwater Parcel from P&DD in exchange for a pro-rata share of the acquisition cost of the entire Blain Parcel on a per square foot basis. The Atwater West parcel is 51.9% of the entire Blain Parcel. Accordingly, DWSD's share of the total \$34,134,313.03 acquisition cost is \$17,715,708.46.

The City initiated condemnation proceedings for the Blain Parcel in 2000 by filing a lawsuit against its owner, Detroit Plaza Limited Partnership. The City had the property appraised and offered what it deemed to be fair market value, \$14,000,000. The owner rejected the City's appraisal and demanded substantially more money. After extensive litigation, the court ordered the City to pay \$25,000,000 for the property. The City appealed that ruling. The Court of Appeals affirmed the trial court's ruling in 2006.¹ The Michigan Supreme Court rejected the City's appeal in June 2007.² In addition to the amount of the court judgment, the Detroit Plaza Limited Partnership was entitled to interest on the judgment from the date the lawsuit was filed to the conclusion of the lawsuit. As of June 26, 2007, when the litigation ended, the amount had risen to \$34,134,313.03.

¹ City of Detroit v Detroit Plaza Limited Partnership, 273 Mich App 260; 730 NW2d 523 (2006).

² City of Detroit v Detroit Plaza Limited Partnership, 478 Mich 925; 732 NW2d 904 (2007).

**ATWATER WEST**

Land in the City of Detroit, County of Wayne, State of Michigan, being part of Private Claims 7, 12, 132, and 181, being part of the "Plat of Part of the Rivard Farm Lying South of Jefferson Avenue," Private Claim 181, as recorded in Liber 6 of Deeds, Page 52 (W.C.R.); also Part of Lots I, K, L, M, N, O of "Private Plat of Mullet Farm Plat," (Front Concession), City of Detroit, Private Claims 7 and 132, as recorded in Liber 226 of Deeds, Pages 439, 440 and 442 (W.C.R.); also All of Lot 7 and part of Lot 1, of "Plat of the Guoin Farm," as subdivided by A.E. Hathon, May 1836, recorded June 20, 1836 in Liber 11 of Deeds on Page 596 (W.C.R.) described as:

Commencing at the intersection of the southwesterly line of vacated Riopelle Street (30 feet wide) and the southeasterly line of Atwater Street (50 feet wide), also being the northeasterly corner of Lot 3 of, "Plat of the Subdivision of the Dominique Riopelle Farm, Being the Front Part of P.C.13," as recorded in Liber 15 of Deeds, Pages 394 and 395 (W.C.R.) and in Liber 25 of Deeds, Pages 405-407 (W.C.R.), thence $S64^{\circ}47'10''W$ 422.44 feet to the northeasterly corner of Lot 7 of said "Plat of the Guoin Farm" also being the Point of Beginning; thence $S26^{\circ}37'56''E$ along the northeasterly line of Lot 7 and Lot 1 of said "Plat of the Guoin Farm," 270.52 feet; thence $S64^{\circ}47'33''W$ 425.60 feet; thence $N13^{\circ}04'02''W$ 66.49 feet; thence $S65^{\circ}27'27''W$ 83.42 feet; thence $S64^{\circ}59'27''W$ 93.23 feet; thence $N25^{\circ}49'38''W$ 99.04 feet; thence $N21^{\circ}42'52''E$ 138.66 feet; thence $N24^{\circ}30'08''W$ 15.85 feet to the proposed southeasterly line of Atwater Street (60 feet wide); thence $N65^{\circ}32'20''E$ along a line measuring 10.00 feet perpendicular to the southeasterly line of Atwater Street (50 feet wide), 418.45 feet; thence $N64^{\circ}47'10''E$ 62.71 feet to the northeasterly line of Lot 7 of said, "Plat of the Guoin Farm," also being the Point of Beginning. Containing 142,455 square feet, 3.27 acres, more or less.



MEMORANDUM

TO: Mirza Rabbai, Detroit Water and Sewerage Department
FROM: *Lawrence Moloney* Lawrence Moloney, Wade-Trim
DATE: March 15, 2001
SUBJECT: Detroit Water and Sewerage Department, CS-1281
"Assistance with Phase III - Combined Sewer Overflow Program"
Task 3 Land Acquisition, Future Detroit River Sites

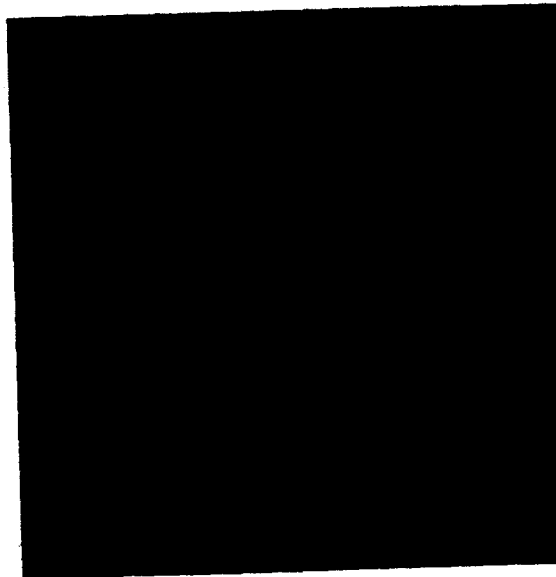
Reference is made to Peter Swanson's Malcolm Pirnie Inc. memorandum dated February 7, 2001, regarding Basin Land Requirements and Preliminary Facility Layouts. A copy is enclosed.

The above memorandum presents preliminary facility layouts for the following proposed basins: Rivard, Jos Campau, Iroquois and Clellan. The layouts were developed to determine how much property would be required for each site.

Please contact me at (313) 961-3650 if you have any questions.

LJM:RL:rn
DWB 203901D
P:\CS-1281\DWB 203901\08.01general\Future Detroit River Sites Prelim layouts
Enclosure

cc: Craig Dewey Stanley, Detroit Water and Sewerage Department
Mark Coleman, Wade-Trim
Mark Grazioli, Wade-Trim



MALCOLM PIRNIE

To: Larry Moloney, Wade-Trim **Date:** February 7, 2001

Copy: Allen Gelderloos, Malcolm Pirnie

From: Peter Swanson, Malcolm Pirnie

Re: Basin Land Requirements and Preliminary Facility Layouts

On January 3, 2001, Malcolm Pirnie was tasked with evaluating land requirements and preliminary facility layouts for four proposed combined sewer overflow (CSO) basins located along the Detroit River in the City of Detroit. Malcolm Pirnie understands that this evaluation will be utilized for property acquisition considerations for basin sites. No considerations for screening and disinfection facilities were made as part of this task.

The proposed basin sites, as identified by Mr. Larry Moloney, are as follows:

1. Rivard Basin – to treat flow from Woodward, Bates, Randolph, Hastings, Rivard, Riopelle and Orleans outfalls.
2. Jos Campau Basin – to treat flow from Jos Campau, McDougall and Adair outfalls.
3. Iroquois Basin - to treat flow from Iroquois and Fischer outfalls.
4. McClellan Basin – to treat flow from McClellan outfall.

To estimate land requirements and develop preliminary basin layouts, we utilized peak flow estimates generated on November 8, 2000 by Camp Dresser and McKee (CDM) to provide 10-minute detention for a 10-year, 1-hour storm event. Estimates were generated using the Greater Detroit Regional Sewer System (GDRSS) Model, Level 3.0 set for the following conditions:

- Preferred Plan conditions, including source control, in-system storage, and Task 1 gates;
- 2020 dry weather flow;
- Free discharge at outfalls; and,
- Hydrologic conditions set to account for the maximum 1-hour within a 24-hour event.

Tables 1 through 4, below, identify design criteria for each of the proposed basins.

Table 1: Rivard Basin Design Criteria	
Design Flow (10 year, 1 hour Peak Flow)	3,654 cfs
Design Contact Time	10 minutes
Basin Capacity	16.4 MG
Basin Footprint	505 ft. by 290 ft. (15 ft. sidewater depth)
Control Building Footprint	150 ft. by 170 ft.
Approximate Total Site Area	285,000 sq. ft. (6.5 acres)

